

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,

Plaintiff,

vs.

CATES, et al.,

Defendants.

1:23-cv-00856-JLT-GSA-PC

**ORDER STRIKING PLAINTIFF'S
AUGUST 14, 2023 NOTICE AS MOOT**

(ECF No. 15.)

I. BACKGROUND

Melvin Joseph Simmons ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. On June 5, 2023, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) The Complaint awaits the Court's requisite screening pursuant to 28 U.S.C. § 1915.

On August 14, 2023, Plaintiff filed a document titled "Notice and Civil Rights Action for Statutory Damages . . ." (ECF No. 15.)¹ On August 17, 2023, the Court issued an order requiring

¹ The entire title of Plaintiff's August 14, 2023 filing is "Notice and Civil Rights Action for Statutory Damages Against Employees of the United States Commissioner's United States Magistrate Judge Gary S. Austin and United States District Judge Jennifer L. Thurston for Failure to Perform Their Legal Obligations and Implied Fiduciary Duty in Due Diligence Salvor Established to Combat Human Trafficking in Accordance to Operation of Law 18 USCS § 1595A.(b)(c)." (ECF No. 15.)

1 Plaintiff to respond to the Court and clarify the legal nature of his August 14, 2023 filing. (ECF
2 No. 16.) On September 5, 2023 and September 14, 2023, Plaintiff filed responses to the Court's
3 order. (ECF Nos. 17, 18.)

4 **II. PLAINTIFF'S RESPONSES**

5 In Plaintiff's first response, filed on September 5, 2023, he primarily indicates that he is
6 seeking damages against Magistrate Judge Gary S. Austin and District Judge Jennifer L. Thurston
7 for their failure to perform fiduciary and legal duties. (ECF No. 17.) Plaintiff's second response,
8 filed on September 14, 2023, indicates that Plaintiff requests the two Judges to disqualify
9 themselves from proceeding with this case based on their personal bias or prejudice concerning
10 the parties. (ECF No. 18.)

11 The Court interprets Plaintiff's August 14, 2023 Notice as a motion to disqualify
12 Magistrate Judge Gary S. Austin and District Judge Jennifer L. Thurston from proceeding with
13 this case, and a motion to recover monetary damages from the two Judges. Such motions were
14 resolved by the Court's orders issued on August 8, 2023 (ECF No. 13) and August 9, 2023 (ECF
15 No. 14). Therefore, the Court shall strike Plaintiff's August 14, 2023 Notice (ECF No. 15) as
16 moot. Until the Court screens the Plaintiff's complaint, any further "motions" by Plaintiff which
17 are based on the same or similar requests as those contained in Plaintiff's August 14, 2023 (Doc
18 # 15) *Notice*, shall be ordered stricken as moot.

19 The Court also notes that to the extent Plaintiff's allegations are based on a sovereign
20 citizen ideology, courts have uniformly and summarily rejected these theories/arguments as
21 frivolous and meritless. See Dickenson v. Biden, 2022 U.S. Dist. LEXIS 185614.

22 **III. CONCLUSION AND ORDER**

23 The Court interprets Plaintiff's August 14, 2023 Notice as a motion to disqualify
24 Magistrate Judge Gary S. Austin and District Judge Jennifer L. Thurston from proceeding with
25 this case, and a motion to recover monetary damages from the Judges. Such motions were
26 resolved by the Court's orders issued on August 8, 2023 (ECF No. 13) and August 9, 2023 (ECF
27 No. 14). Therefore, based on the foregoing, **IT IS HEREBY ORDERED** that:
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1. Plaintiff’s August 14, 2023 filing (ECF No. 15), titled “Plaintiff’s Notice; and Civil Rights Action for Statutory Damages Against Employees of the United States Commissioner’s United States Magistrate Judge Gary S. Austin and United States District Judge Jennifer L. Thurston for Failure to Perform Their Legal Obligations and Implied Fiduciary Duty in Due Diligence Salvor Established to Combat Human Trafficking in Accordance to Operation of Law 18 USCS § 1595A.(b)(c)” is **STRICKEN** from the record as moot; and

IT IS SO ORDERED.